

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

CARHARTT, INC.,

Plaintiff,

V.

Support@Creestock.com d/b/a
CREESTOCK.COM,
Support@PiperMall.com d/b/a
PIPERMALL.COM and
TEE DO IT BETTER

Defendants. :

Case No 20-cv-12225-GCS-APP

PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 11)

NOW COMES Plaintiff, CARHARTT, INC. (“Carhartt”), by and through its attorneys, DICKINSON WRIGHT PLLC, and for its Response to Order to Show Cause (ECF No. 11), states:

1. Carhartt filed its Complaint on August 18, 2020. ECF No. 1.
2. Defendant Tee Do It Better was served via personal service on October 1, 2020. ECF No. 6.

3. Carhartt filed a motion for alternative service as to Defendants Creestock and PiperMall and an order granting the motion was entered on November 5, 2020. ECF No. 7 (Motion) and ECF No. 9 (Order Granting Motion).

4. Creestock and PiperMall were served the same day in accordance with the Order. ECF No. 10.

5. On January 5, 2021, the Court entered an order requiring Plaintiff to show cause in writing by January 19, 2021 why the case should not be dismissed for failure to prosecute. ECF No. 11.

6. Since the Court entered the Order to Show Cause:

- a. Plaintiff filed a Request for Clerk's Entry of Default against all Defendants (ECF No. 12);
- b. A Default was entered against all Defendants (ECF No. 13-15);
- c. Plaintiff filed a Motion for Permanent Injunction and Default Judgment against all Defendants (ECF No. 16).

7. The above actions establish Plaintiff is diligently prosecuting this case. In fact, if the Court grants Plaintiff's Motion for Permanent Injunction and Default Judgment, the case will be closed in short order.

8. Given the facts set forth above, dismissal for failure to prosecute would be improper. Dismissal for failure to prosecute is "a harsh sanction which the court should order only in extreme situations showing a clear record of

contumacious conduct by the plaintiff.” *Carpenter v City of Flint*, 723 F.3d 700, 704.

9. Before dismissing an action for failure to prosecute, the court must consider (1) whether the failure to prosecute was due to willfulness, bad faith, or fault, (2) whether Defendants are prejudiced, (3) whether Plaintiff was warned that failure to prosecute could lead to dismissal, and (4) whether less drastic sanctions were imposed or considered before dismissal. *Id.*

10. Here, all of the factors weigh heavily against issuing any sanction, let alone the most severe sanction of dismissal. First, there is no evidence of willfulness, bad faith, or fault on the part of Plaintiff. On the other hand, part of the “delay” was due to the publication of false location information on the website of Creestock.com leading to delays in service of process. Second, there is no prejudice to Defendants given that all of them have failed to appear to defend this case. Third, no prior show cause orders were entered, and after receiving the show cause order at issue here, Plaintiff immediately defaulted Defendants and filed a Motion for Permanent Injunction and Default Judgment. ECF No. 12-16. Finally, it would be inappropriate to issue any sanction, much less the most severe sanction of dismissal, given the actions taken by Plaintiff after receiving the Order to Show Cause.

WHEREFORE, Plaintiff CARHARTT, INC. respectfully requests that this Honorable Court VACATE the Order To Show Cause (ECF No. 11).

Respectfully Submitted,

DICKINSON WRIGHT PLLC

By: /s/ Christopher J. Ryan
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Dated: January 19, 2021

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that on January 19, 2021, I will file the foregoing document via the Court's ECF system, which will send notification to those registered. In addition, I will send this document and all exhibits to support@creestock.com and support@pipermail.com in accordance with the Court's Order Granting Motion for Alternative Service Upon Creestock.com and PiperMall.com (ECF No. 9). Finally, I will cause this document and all exhibits to be mailed via US Mail to Tee Do It Better, 211 N. Pennsylvania St., Suite 600, Indianapolis, IN 46204.

/s/Christopher J. Ryan